

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

NATIONWIDE MUTUAL INS. CO.,

Plaintiff,

v.

05cv0780

ELECTRONICALLY FILED

NATIONAL RV HOLDINGS, INC., doing
business as NATIONAL RV,
FREIGHTLINER CUSTOM CHASIS
CORPORATION, CATERPILLAR, INC. ENGINE
DIVISION a wholly-owned subsidiary of
CATERPILLAR, INC., INTERMOUNTAIN
SPORTS, INC., doing business as INTERMOUNTAIN
RV, WYOMING MACHINERY COMPANY,
AL-MAR RV, INC., doing business as KEYSTONE
RV CENTER,

Defendants,

v.

WYOMING MACHINERY COMPANY,

Cross Claimant,

v.

NATIONAL RV HOLDINGS, INC.,
FREIGHTLINER CUSTOM CHASIS CORPORATION,
CATERPILLAR, INC. ENGINE DIVISION a wholly-owned
subsidiary of CATERPILLAR, INC., INTERMOUNTAIN
SPORTS, INC., WYOMING MACHINERY COMPANY,
AL-MAR RV, INC.,

Cross Defendants,

v.

WYOMING MACHINERY COMPANY,

Third-Party Plaintiff,

v.

FLEXATUBE INDUSTRIES, INC.,

Third-Party Defendant.

Memorandum Order

This is a product liability action. Plaintiff commenced this action in diversity alleging
that the 2001 Nation RV Tradewinds motorhome purchased by subrogees James and Desire

Boyd was defective and/or malfunctioned when it caught fire eight miles from the Boyd's residence in Fairfield, Pennsylvania. Pending before this Court is the motion to dismiss or, in the alternative, transfer for improper venue, filed by defendant Al-Mar RV, Inc. Defendant argues that the Western District of Pennsylvania is an improper venue for this action, because a substantial part of the events or omissions giving rise to plaintiff's claim occurred in the Middle District of Pennsylvania, Harrisburg Division, and therefore, this claim should be dismissed and/or transferred, pursuant to Fed. R. Civ. P. 12(b)(3) and 28 U.S.C. § 1406(a). Plaintiff has filed a response consenting to the motion to transfer of this case to Middle District of Pennsylvania, Harrisburg Division.

After reviewing the facts as alleged by plaintiff, which the Court is required to accept as true, this Court finds that a substantial part of the events giving rise to plaintiff's claim occurred within the boundaries of the Middle District of Pennsylvania. Specifically, the motorhome caught fire in Fairfield, Pennsylvania; plaintiff's subrogees took the motorhome to defendant Keystone RV in Greencastle, Pennsylvania for various repairs and services between October 2001 and October 2003; and, plaintiff's subrogees currently reside in Franklin County, Pennsylvania. Accordingly, the facts as asserted by plaintiff establish that, pursuant to 28 U.S.C. § 1391(a)(2), venue is proper in the Middle District of Pennsylvania, not the Western District of Pennsylvania.

Section 1406(a) of the United States Code provides that where, as here, a plaintiff has chosen an improper forum for his or her claims, the district court where the claim was originally filed shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

In the interests of justice and judicial economy, IT IS HEREBY ORDERED that this case be transferred to the Middle District of Pennsylvania, Harrisburg Division, where venue is proper. Defendant's motion to dismiss and/or transfer venue (doc. no. 11) is GRANTED IN PART AND DENIED IN PART.

SO ORDERED this 19th day of September, 2005.

s/Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All counsel of record as listed below

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